

EXPOSURE DRAFT



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Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2022

David Hurley
Governor-General

By His Excellency's Command

Barnaby Joyce [**DRAFT ONLY—NOT FOR SIGNATURE**]
Deputy Prime Minister and Minister for Infrastructure, Transport and Regional
Development

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1 Name

This instrument is the *Transport Safety Investigation Amendment (2022 Measures No. 1) Regulations 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Transport Safety Investigation Act 2003*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1—Amendments

Transport Safety Investigation Regulations 2021

1 Section 5

Insert:

aircraft accident: see section 6.

aircraft incident: see section 6.

aircraft incident (external): see section 6.

2 Section 5

Repeal the following definitions:

- (a) definition of *airprox*;
- (b) definition of *air transport operation*;
- (c) definition of *below minimum altitude*.

3 Section 5

Insert:

Category A (passenger transport) aircraft operation: see section 8.

Category B (commercial non-passenger) aircraft operation: see section 9.

Category C (non-commercial) aircraft operation: see section 10.

Category D (type 2 RPA and certain unmanned balloons) aircraft operation:
see section 11.

4 Section 5

Repeal the following definitions:

- (a) definition of *charter operation*;
- (b) definition of *critical rejected take-off*.

5 Section 5

Insert:

declaration of an emergency: see section 6.

fatal aircraft-related injury: see section 6.

6 Section 5 (definition of *near-collision*)

Repeal the definition.

7 Section 5 (definition of *operator*)

Omit “for the purposes of travel”.

8 Section 5 (definition of *regular public transport operation*)

Repeal the definition.

9 Section 5

Insert:

reportable serious aircraft incident: see section 6.

serious aircraft incident: see subsection 6A(1).

serious aircraft-related injury: see section 6.

10 Section 5 (definition of *serious property damage*)

Repeal the definition.

11 Section 5

Insert:

serious property damage incident (external): see section 6.

12 Section 5 (definition of *traffic collision avoidance system resolution advisory*)

Repeal the definition.

13 Section 6

Insert:

aircraft accident: an aircraft is involved in an *aircraft accident* if:

- (a) a person suffers a fatal aircraft-related injury in relation to the operation of the aircraft; or
- (b) a person suffers a serious aircraft-related injury in relation to the operation of the aircraft; or
- (c) the aircraft sustains damage or structural failure, or there are reasonable grounds for believing that the aircraft has sustained damage or structural failure, which:
 - (i) adversely affects the structural strength, performance or flight characteristics of the aircraft; and
 - (ii) would normally require major repair or replacement of the affected component;

except for any of the following:

- (iii) engine failure;
- (iv) engine damage limited to a single engine (including damage to its cowlings or accessories);
- (v) damage to propellers, wing tips, antennas, probes, vanes, tyres, brakes, wheels, fairings, panels, landing gear doors or windscreens;
- (vi) damage such as small dents or puncture holes to the aircraft skin;
- (vii) minor damage to main rotor blades, tail rotor blades or landing gear;
- (viii) minor damage resulting from hail or bird strike (including holes in the radome); or
- (d) the aircraft is missing; or
- (e) the aircraft is completely inaccessible.

aircraft incident means any occurrence that:

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- (a) is associated with the operation of an aircraft; and
- (b) affects or could affect the safety of the operation of the aircraft.

aircraft incident (external) means an aircraft incident that originates from any of the following outside the aircraft:

- (a) infrastructure;
- (b) flying and other objects;
- (c) animals or birds.

14 Section 6

Repeal the following definitions:

- (a) definition of ***airprox***;
- (b) definition of ***air transport operation***;
- (c) definition of ***below minimum altitude***.

15 Section 6

Insert:

Category A (passenger transport) aircraft operation: see section 8.

Category B (commercial non-passenger) aircraft operation: see section 9.

Category C (non-commercial) aircraft operation: see section 10.

Category D (type 2 RPA and certain unmanned balloons) aircraft operation: see section 11.

16 Section 6

Repeal the following definitions:

- (a) definition of ***charter operation***;
- (b) definition of ***critical rejected take-off***.

17 Section 6

Insert:

declaration of an emergency, in relation to an aircraft, means:

- (a) a declaration, by a flight crew member of the aircraft, of an alert phase (PAN PAN) or a distress phase (MAYDAY); or
- (b) a declaration by an air traffic service provider of a distress phase (DETRESFA) in relation to the aircraft.

fatal aircraft-related injury: a person suffers a ***fatal aircraft-related injury*** in relation to the operation of an aircraft if:

- (a) the person suffers an injury as a result of:
 - (i) being in the aircraft during the operation; or
 - (ii) direct contact during the operation with any part of the aircraft, including parts which have become detached from the aircraft; or
 - (iii) direct exposure to jet blast during the operation; and
- (b) the person dies as a result of the injury; and
- (c) either:

- (i) the death occurs within 30 days after the injury occurs; or
- (ii) the injury requires the person to be admitted to hospital within 30 days after the injury occurs; and
- (d) none of the following applies:
 - (i) the injury results from natural causes (unless the person is a flight crew member);
 - (ii) the injury is intentionally self-inflicted;
 - (iii) the injury is intentionally caused by another person;
 - (iv) the injury is to a person who is a stowaway in a part of the aircraft that is not usually accessible to crew members or passengers after take-off.

18 Section 6

Repeal the following definitions:

- (a) definition of *near-collision*;
- (b) definition of *regular public transport operation*.

19 Section 6

Insert:

reportable serious aircraft incident means:

- (a) a serious aircraft incident; or
- (b) an incident that, under subsection 6A(2), is to be reported as if it were a serious aircraft incident.

20 Section 6 (definition of *runway incursion*)

Omit “that creates a collision hazard for the aircraft or results in a reduction of safety for the aircraft”.

21 Section 6

Insert:

serious aircraft incident: see subsection 6A(1).

serious aircraft-related injury: a person suffers a *serious aircraft-related injury* in relation to the operation of an aircraft if:

- (a) the person suffers an injury as a result of:
 - (i) being in the aircraft during the operation; or
 - (ii) direct contact during the operation with any part of the aircraft, including parts which have become detached from the aircraft; or
 - (iii) direct exposure to jet blast during the operation; and
- (b) any of the following apply:
 - (i) the injury requires, or would usually require, admission to hospital, for more than 48 hours, within 7 days after the day when the injury is suffered;
 - (ii) the injury involves a fracture of any bone (other than a simple fracture of fingers, toes or nose);
 - (iii) the injury involves lacerations which cause severe haemorrhage or severe nerve, muscle or tendon damage;
 - (iv) the injury involves injury to any internal organ;

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- (v) the injury involves second or third degree burns, or any burns affecting more than 5% of the body surface;
- (vi) the injury involves exposure to hazardous chemicals, infectious substances or injurious radiation; and
- (c) none of the following applies:
 - (i) the injury results from natural causes (unless the person is a flight crew member);
 - (ii) the injury is intentionally self-inflicted;
 - (iii) the injury is intentionally caused by another person;
 - (iv) the injury is to a person who is a stowaway in a part of the aircraft that is not usually accessible to crew members or passengers after take-off.

22 Section 6 (definition of *serious property damage*)

Repeal the definition.

23 Section 6

Insert:

serious property damage incident (external), in relation to the operation of an aircraft, means damage to property outside the aircraft that:

- (a) is caused by:
 - (i) contact with any part of the aircraft, including anything that is attached to the aircraft or that has become detached from the aircraft; or
 - (ii) direct exposure to jet blast, propeller wash or rotor downwash from the aircraft; and
- (b) that would cost at least \$25,000 to repair or replace.

24 Section 6 (definition of *traffic collision avoidance system resolution advisory*)

Repeal the definition.

25 After section 6

Insert:

6A Reportable serious aircraft incidents

- (1) For the purposes of this instrument, a *serious aircraft incident* is an incident involving circumstances indicating that there was a high probability of an aircraft accident.
- (2) Without limiting subsection (1), each of the following incidents in relation to the operation of an aircraft is to be reported as if it were a serious aircraft incident:
 - (a) a near collision requiring an avoidance manoeuvre to avoid a collision or an unsafe situation, or when an avoidance action would have been appropriate;
 - (b) a collision with anything other than an animal or a bird;
 - (c) where controlled flight into terrain was only marginally avoided;
 - (d) an aborted take-off on a closed, engaged or unassigned runway, or on a taxiway (other than an authorised operation by a helicopter);

- (e) a take-off from a closed, engaged or unassigned runway, or from a taxiway (other than an authorised operation by a helicopter);
- (f) a landing or attempted landing on a closed, engaged or unassigned runway, on a taxiway (other than an authorised operation by a helicopter), or on an unintended landing location (such as a road);
- (g) the retraction of a landing gear leg during landing, or a wheels-up landing;
- (h) the dragging, during landing, of a wing tip, engine pod or any other part of the aircraft;
- (i) a significant failure to achieve predicted performance during take-off or initial climb;
- (j) fire or smoke in the cockpit, the passenger compartment or a cargo compartment, or engine fire, even if the fire was extinguished by the use of extinguishing agents;
- (k) an event requiring the emergency use of oxygen by a flight crew member;
- (l) aircraft structural failure, engine disintegration or uncontained turbine engine failure;
- (m) multiple malfunctions of one or more aircraft systems seriously affecting the operation of the aircraft;
- (n) incapacitation of a flight crew member:
 - (i) during a single pilot operation; or
 - (ii) during a multi-pilot operation, if the safety of the operation is compromised because of a significant increase in workload for the remaining flight crew members;
- (o) fuel quantity level or distribution situations (such as insufficient fuel, fuel exhaustion, fuel starvation, or inability to use all usable fuel on board) requiring the declaration of an emergency by the pilot;
- (p) a runway incursion where a collision is narrowly avoided;
- (q) a take-off or landing incident such as under-shooting, overrunning or running off the side of a runway;
- (r) any of the following which caused, or could have caused, difficulties controlling the aircraft:
 - (i) system failures (including loss of power or thrust);
 - (ii) weather phenomena;
 - (iii) operations outside the approved flight envelope;
 - (iv) any other occurrence;
- (s) failure of more than one redundant system mandatory for flight guidance and navigation;
- (t) the unintentional or emergency release of a slung load or any other load carried external to the aircraft.

26 At the end of subsection 7(3)

Add:

- ; (d) a model aircraft (within the meaning of Part 101 of the *Civil Aviation Safety Regulations 1998*);
- (e) a small balloon (within the meaning of Part 101 of the *Civil Aviation Safety Regulations 1998*);
- (f) a light balloon (within the meaning of Part 101 of the *Civil Aviation Safety Regulations 1998*).

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27 Subsection 7(7)

Repeal the subsection, substitute:

- (7) This Part also applies in relation to:
- (a) a fatal aircraft-related injury if the death, or the injury that results in the death, occurs as a result of a matter occurring during the period mentioned in subsection (5) or (6); and
 - (b) a serious aircraft-related injury if the injury occurs as a result of a matter occurring during the period mentioned in subsection (5) or (6).

28 Sections 8 to 12

Repeal the sections, substitute:

8 Category A (passenger transport) aircraft operations

An operation of an aircraft is a *Category A (passenger transport) aircraft operation* if the operation is:

- (a) a passenger transport operation (within the meaning of the *Civil Aviation Safety Regulations 1998*); or
- (b) a medical transport operation (within the meaning of the *Civil Aviation Safety Regulations 1998*); or
- (c) an operation for the purpose of repositioning the aircraft to a place where a Category A (passenger transport) aircraft operation (including an operation that is a Category A (passenger transport) aircraft operation because of this paragraph) is to commence.

9 Category B (commercial non-passenger) aircraft operations

An operation of an aircraft is a *Category B (commercial non-passenger) aircraft operation* if:

- (a) any of the following applies:
 - (i) the operation is conducted for a commercial purpose;
 - (ii) the operation is a cargo transport operation (within the meaning of the *Civil Aviation Safety Regulations 1998*);
 - (iii) the aircraft is a type 1 RPA;
 - (iv) the operation is conducted for the purpose of repositioning the aircraft to a place where a Category B (commercial non-passenger) aircraft operation (including an operation that is a Category B (commercial non-passenger) aircraft operation because of this subparagraph) is to commence; and
- (b) the operation is not:
 - (i) a Category A (passenger transport) aircraft operation; or
 - (ii) a Category D (type 2 RPA and certain unmanned balloons) aircraft operation.

Note: For example, the following may be *Category B (commercial non-passenger) aircraft operations* if they are conducted for a commercial purpose:

- (a) aerial work operations such as surveying, spotting, surveillance, agricultural operations, photography, and advertising;
- (b) search and rescue operations (other than medical transport operations that are Category A (passenger transport) aircraft operations);
- (c) flying training activities.

10 Category C (non-commercial) aircraft operations

An operation of an aircraft is a *Category C (non-commercial) aircraft operation* if the operation is not:

- (a) a Category A (passenger transport) aircraft operation; or
- (b) a Category B (commercial non-passenger) aircraft operation; or
- (c) a Category D (type 2 RPA and certain unmanned balloons) aircraft operation.

Note: Generally, an operation of an aircraft that is not conducted for a commercial purpose will be a Category C (non-commercial) aircraft operation (unless the aircraft is an RPA).

11 Category D (type 2 RPA and certain unmanned balloons) aircraft operations

An operation of an aircraft is a *Category D (type 2 RPA and certain unmanned balloons) aircraft operation* if the aircraft is:

- (a) a type 2 RPA; or
- (b) a medium balloon (within the meaning of Part 101 of the *Civil Aviation Safety Regulations 1998*); or
- (c) a heavy balloon (within the meaning of Part 101 of the *Civil Aviation Safety Regulations 1998*).

11A Reportable matters—Category A (passenger transport) aircraft operations

- (1) For the purposes of the definition of *immediately reportable matter* in subsection 3(1) of the Act, the following investigable matters involving an aircraft engaged in a Category A (passenger transport) aircraft operation are prescribed:
 - (a) an aircraft accident;
 - (b) a reportable serious aircraft incident;
 - (c) a loss of a separation standard between aircraft;
 - (d) a declaration of an emergency in relation to the aircraft;
 - (e) a serious property damage incident (external).
- (2) For the purposes of the definition of *routine reportable matter* in subsection 3(1) of the Act, the following investigable matters involving an aircraft engaged in a Category A (passenger transport) aircraft operation are prescribed:
 - (a) an aircraft incident;
 - (b) an aircraft incident (external).

11B Reportable matters—Category B (commercial non-passenger) aircraft operations

- (1) For the purposes of the definition of *immediately reportable matter* in subsection 3(1) of the Act, the following investigable matters involving an aircraft engaged in a Category B (commercial non-passenger) aircraft operation are prescribed:
 - (a) an aircraft accident;
 - (b) a loss of a separation standard between aircraft;
 - (c) a serious property damage incident (external).

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- (2) For the purposes of the definition of *routine reportable matter* in subsection 3(1) of the Act, the following investigable matters involving an aircraft engaged in a Category B (commercial non-passenger) aircraft operation are prescribed:
 - (a) a reportable serious aircraft incident;
 - (b) a declaration of an emergency in relation to the aircraft;
 - (c) an aircraft incident (external).

11C Reportable matters—Category C (non-commercial) aircraft operations

- (1) For the purposes of the definition of *immediately reportable matter* in subsection 3(1) of the Act, the following investigable matters involving an aircraft engaged in a Category C (non-commercial) aircraft operation are prescribed:
 - (a) an aircraft accident mentioned in paragraph (a) (fatal aircraft-related injuries), (b) (serious aircraft-related injuries) or (d) (missing aircraft) of the definition of *aircraft accident* in section 6 of this instrument;
 - (b) a loss of a separation standard between aircraft;
 - (c) a serious property damage incident (external).
- (2) For the purposes of the definition of *routine reportable matter* in subsection 3(1) of the Act, the following investigable matters involving an aircraft engaged in a Category C (non-commercial) aircraft operation are prescribed:
 - (a) an aircraft accident, other than an aircraft accident of a kind mentioned in paragraph (1)(a) of this section;
 - (b) a reportable serious aircraft incident;
 - (c) a declaration of an emergency in relation to the aircraft;
 - (d) an aircraft incident (external).

11D Reportable matters—Category D (type 2 RPA and certain unmanned balloons) aircraft operations

- (1) For the purposes of the definition of *immediately reportable matter* in subsection 3(1) of the Act, the following investigable matters involving an aircraft engaged in a Category D (type 2 RPA and certain unmanned balloons) aircraft operation are prescribed:
 - (a) an aircraft accident mentioned in paragraph (a) (fatal aircraft-related injuries) or (b) (serious aircraft-related injuries) of the definition of *aircraft accident* in section 6 of this instrument;
 - (b) a serious property damage incident (external).
- (2) For the purposes of the definition of *routine reportable matter* in subsection 3(1) of the Act, the following investigable matters involving an aircraft engaged in a Category D (type 2 RPA and certain unmanned balloons) aircraft operation are prescribed:
 - (a) an aircraft accident, other than an aircraft accident of a kind mentioned in paragraph (1)(a) of this section;
 - (b) a loss of a separation standard between aircraft.

12 Occurrences that are prescribed as both immediately reportable matters and routine reportable matters

To avoid doubt:

- (a) none of the descriptions of, or references to, kinds of investigable matters in this Part limit each other; and
- (b) if a particular occurrence that is an investigable matter involving an aircraft is prescribed, by a provision of this Part, for the purposes of both:
 - (i) the definition of *immediately reportable matter* in subsection 3(1) of the Act; and
 - (ii) the definition of *routine reportable matter* in subsection 3(1) of the Act;

the occurrence is to be treated as an immediately reportable matter in relation to the aircraft.

Note: For example, if a collision involving an aircraft engaged in a Category B (commercial non-passenger) aircraft operation is covered by each of the definitions of *aircraft accident*, *reportable serious aircraft incident* and *aircraft incident* in section 6, the collision is to be treated as an immediately reportable matter under paragraph 11B(1)(a) (aircraft accidents) in relation to the aircraft.

29 At the end of section 13

Add:

- ; (i) the insurer of the aircraft concerned;
- (j) a sport aviation body (within the meaning of the *Civil Aviation Safety Regulations 1998*) that administers aviation activities in relation to the aircraft.

30 Subsection 14(1)

Omit “section 11 of this instrument”, substitute “subsection 11A(1), 11B(1), 11C(1) or 11D(1) of this instrument”.

31 Subsection 15(1)

Omit “an immediately reportable matter of a kind referred to in section 11 of this instrument or a routine reportable matter of a kind referred to in section 12 of this instrument”, substitute “an immediately reportable matter or a routine reportable matter of a kind referred to in section 11A, 11B, 11C or 11D of this instrument”.

32 Subsection 15(1) (after table item 8)

Insert:

- 8A The Aviation Reference Number (within the meaning of the *Civil Aviation Safety Regulations 1998*) of each person mentioned in item 7 or 8 of this table (if the person has an Aviation Reference Number)

33 Subsection 15(1) (table item 13, column headed “Particular”, paragraph (h))

Omit “animal, including a bird”, substitute “animal or a bird”.

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34 Subsection 15(2)

Omit “a matter mentioned in item 15 of the table in subsection 12(1) of this instrument or item 9 of the table in subsection 12(2) of this instrument (a collision with an animal, including a bird)”, substitute “an aircraft incident (external) involving a collision with an animal or a bird”.

35 At the end of section 21

Add:

- ; (e) a pilotage provider (within the meaning of the *Navigation Act 2012*) responsible for assigning or allocating a pilot to the ship;
- (f) a vessel traffic service authority (within the meaning of the *Navigation Act 2012*) that provides a vessel traffic service to the ship.

36 Section 41 (at the end of the heading)

Add “required by Chief Commissioner”.